

**AMENDMENT NUMBER TWO**

**TO AIA DOCUMENT (A121/CMc-a) STANDARD FORM AGREEMENT BETWEEN  
OWNER AND CONSTRUCTION MANAGER WHERE THE CONSTRUCTION  
MANAGER IS ALSO THE CONSTRUCTOR**

**BETWEEN**

**THE CITY OF FRISCO, TEXAS (CITY)**

**AND**

**LEE LEWIS CONSTRUCTION, INC. (CONSTRUCTION MANAGER)**

**FOR**

**CONSTRUCTION OF THE FRISCO RECREATION AND AQUATIC CENTER  
PROJECT**

Made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Nine:

**BETWEEN** the City

**The City of Frisco, Texas**

6101 Frisco Square Boulevard

Frisco, Texas 75034

Telephone: (972) 292-5400

Facsimile: (972) 292-5016

and the Construction Manager:

**Lee Lewis Construction, Inc.**

17111 Preston Road

Suite 100

Dallas, Texas 75379

Telephone: (972) 818-0700

Facsimile: (972) 818-0706

The City and the Construction Manager agree as set forth below.

**THIS AMENDMENT NUMBER TWO** is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and Lee Lewis Construction, Inc., hereinafter referred to as "Construction Manager," to be effective from and after the date as provided herein, hereinafter referred to as the "Amendment Number Two."

**WHEREAS**, the City and Construction Manager entered into that certain AIA Document (A121/CMc-a) Standard Form Agreement between Owner (City) and

Construction Manager (Lee Lewis Construction, Inc.) where the Construction Manager is also the Constructor for the Frisco Recreation and Aquatics Center, ratified by the Frisco City Council on April 4, 2006, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Agreement;" and

**WHEREAS**, the City and Construction Manager entered into that certain Amendment No. 1 to the Agreement to establish a Guaranteed Maximum Price (hereinafter referred to as the "GMP") for construction services for the Frisco Recreation and Aquatics Center, dated December 20, 2005, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number One;" and

**WHEREAS**, the City and Construction Manager desire to amend the Agreement and Amendment Number One for the purpose of extending the scope of the Project (defined in the Agreement) to include additional facilities within the Project; modifying the GMP to include the additional services associated with the construction of the additional facilities; and modifying the GMP to include the costs associated with Change Order items necessary to complete the Project, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number Two;" and

**WHEREAS**, the City and Construction Manager desire to amend the Agreement and Amendment Number One as hereinafter set forth.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:**

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services and Reconciliation of Change Order Items.** City and Construction Manager agree that this Amendment Number Two amends the Agreement and Amendment Number One for the purpose of, among other things, establishing additional Project services to be performed by the Construction Manager, and reconciling change order items to the GMP established by Amendment Number One, as more particularly described in the following exhibit, attached hereto and incorporated herein for all purposes:
  - a. Exhibit "G," Final GMP Reconciliation issued by Lee Lewis Construction, Inc., dated December 19, 2008 (hereinafter referred to as "Final GMP Reconciliation").

2. **Amendment to Amendment Number One, Article 1, Guaranteed Maximum Price.** Article 1, Guaranteed Maximum Price of the Amendment Number One is hereby amended as follows:

**"...ARTICLE I GUARANTEED MAXIMUM PRICE**

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is ~~\$20,472,368~~ \$21,431,370.12. This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F ~~G~~, as follows:..."

3. **Complete Agreement.** This Amendment Number Two, including the exhibit attached hereto and labeled "G," of which is incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding this subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number Two may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. Exhibit "G" is attached hereto and made a part of the Agreement, Amendment Number One and this Amendment Number Two.
4. **Counterparts.** This Amendment Number Two may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number Two.
5. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement and/or Amendment Number One, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement and/or Amendment Number One.
6. **Defined Terms / Ratification of Agreement and Amendment Number One.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement and/or Amendment Number One. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement and Amendment Number One are hereby ratified and confirmed and shall continue in full force and effect.
7. **Authority to Execute.** The individuals executing this Amendment Number Two represent and warrant that they are empowered and duly authorized to so execute this Amendment Number Two on behalf of the parties they represent.
8. **Entire Agreement / Amendment One / Amendment Number Two.** This Amendment Number Two, the Agreement and Amendment Number One embody the entire agreement by and between the parties regarding the subject matter

hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof. This Amendment Number Two may only be amended by written agreement duly executed by all parties hereto.

9. **Venue.** The Agreement, Amendment Number One and Amendment Number Two shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
10. **Assignment.** This Amendment Number Two may not be assigned except as authorized in the Agreement.
11. **Appropriation of Funds.** Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2008-2009 fiscal year. City will give Consultant sixty (60) days notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2008-2009 fiscal year unless and until such funds are budgeted.

**IN WITNESS HEREOF**, the parties have executed this Amendment Number Two to the Agreement, and caused this Amendment Number Two to be effective on the latest day as reflected by the signatures below.

**Effective Date:** \_\_\_\_\_

**CITY**

The City of Frisco, Texas

By: \_\_\_\_\_

Name: George Purefoy

Title: City Manager

**CONSTRUCTION MANAGER**

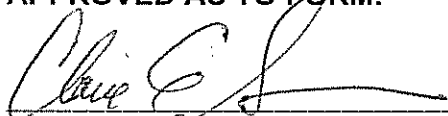
Lee Lewis Construction, Inc.

By: 

Name: TOM E. FERGUSON

Title: PRESIDENT

**APPROVED AS TO FORM:**



Abernathy, Roeder, Boyd and Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.

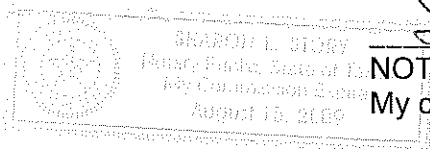
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
My commission expires: \_\_\_\_\_

STATE OF TEXAS:

COUNTY OF Dallas:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED Tom Ferguson, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 4th DAY OF February, 2009.



Sharon L. Story  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
My commission expires: 8/15/09

**EXHIBIT "G"**  
**FINAL GMP RECONCILIATION ISSUED BY LEE LEWIS CONSTRUCTION, INC.,**  
**DATED DECEMBER 19, 2008**

<b>FRISCO RECREATION AND AQUATIC CENTER – FINAL CONTRACT RECONCILIATION</b>		
<b>LEE LEWIS CONSTRUCTION, INC.</b>		
<b>CHANGES TO DATE</b>		
<b>PC#</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
<b>CHANGE ORDER ITEMS</b>		
2	Add landscaping & miscellaneous A/S/M/E/P Changes	\$ 52,355.00
4R	ASI #3 Pricing Revised	\$ 140,668.00
5	Changes to stairs	\$ 15,246.00
6	Add drinking fountains	\$ 18,348.00
7	Storage, lifeguards, family changing and switchgear changes	\$ 94,400.00
9	ASI #8, Add floor drains in pump pits	\$ 4,990.00
10	Floor plan revisions; Architectural M/E/P	\$ 332,385.00
11	Front Entry Structural Revisions	\$ 118,380.00
12	High Roof Structural Revisions	\$ 26,117.00
13	Art Wall Framing, Exterior Lights and Gym Equipment Circuits	\$ 57,151.00
14	Increase Grease Trap from 500 to 100 Gallon Capacity	\$ 1,842.00
15	Add Lightning Protection	\$ 25,018.00
16	Add Commercial Washer and Dryer	\$ 11,661.00
17	Add Gas Service to Meters	\$ 18,369.00
18	Sanitary Sewer Manhole Extra Depth	\$ 4,898.00
19	Change Outside Air Ductwork to Rectangular per RFI #86	\$ 18,215.00
20	Fire Alarm Changes Through ASI #14 Including Value Engineering	\$ (15,312.00)
21	Fire Extinguishers and Cabinets	\$ 3,192.00
22	Add Power Circuits and Time Clock for X-Mas Lights/ Hydrants in Natatorium	\$ 35,026.00
23	Hip Wall at Weight Area, Circuits for Art Glass Lights	\$ 32,857.00
24	Customer Service Counter / Locker Benches / Basketball Goals	\$ 70,062.00
25	Knee Wall at Treadmill Area, Add Door 147A, Hose Bibb at Natatorium	\$ 12,953.00
26	Revise Color and Material Selections	\$ 1,370.00
27	Insulate Heating Water Piping to Natatorium Air Conditioning Units	\$ 7,483.00
28	Transfer Allowances to Contingency	\$ (164,400.00)
29R	Add Mirrors to North Wall of Multipurpose Room – REVISED	\$ 4,224.00
30	Add LCD Monitors	\$ 28,958.00
31	Add Hot Water to Women's 189 and Men's 191	\$ 4,432.00
32	Drywall Work Directed by LLCI	\$ 4,754.00
33	Backwater Valve and Vault	\$ 2,576.00
34	Change Hydromulch to Sod	\$ 40,976.00
35	Install "Art Glass"	\$ 24,591.00
36	Provide Test and Balance Service	\$ 47,384.00
37	Expand Grass Area and Fence at Outdoor Aquatics Area	\$ 54,275.86
38	Electric Use Charges for October, November, December, January	\$ 0.00
39	Changes to A/V Systems	\$ 11,638.00
40	Lower Six Parking Lot Light Poles	\$ 2,249.00
41	Monument Sign	\$ 24,010.00
42	Kitchen Pricing (original value \$124,089.61)	\$ 0.00
42R	Kitchen Pricing	\$ 127,743.61
43	Add Drinking Fountain on Second Floor	\$ 4,993.31

**EXHIBIT "G"**  
**FINAL GMP RECONCILIATION ISSUED BY LEE LEWIS CONSTRUCTION, INC.,**  
**DATED DECEMBER 19, 2008**

<b>FRISCO RECREATION AND AQUATIC CENTER – FINAL CONTRACT RECONCILIATION</b>		
<b>LEE LEWIS CONSTRUCTION, INC.</b>		
<b>CHANGES TO DATE</b>		
<b>PC#</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
44	Add Lighting to Outdoor Aquatics Area	\$ 200,006.00
45	Lifeguard Office	\$ 176,689.39
46	Added Shade Structures	\$ 20,061.00
47	Add Outdoor Aquatics Furniture	\$ 30,640.00
48	Add Security Cameras Inside and Outside	\$ 91,217.00
49	Furnish Only – Five (5) Baby Changing Stations	\$ 863.00
50	Add Cabinets in Fun Zone and Railing at Roof Hatch	\$ 6,576.00
51	Transfer Kiosk Allowance to Contingency	\$ (36,300.00)
52	Reconcile Signage Allowance	\$ 15,356.18
53	Add for Preconstruction Services	\$ 0.00
54	Add for Electrical Costs for Primary Transformer Changeout	\$ 2,249.00
55	Add for Track Lighting in Kitchen Food Prep Area	\$ 3,023.00
56	Add Ultraviolet Sanitizers to Aquatics Systems	\$ 127,524.00
	<b><u>SUBTOTAL – Reconciliation Of Change Order Items</u></b>	<b>\$ 1,943,983.35</b>
<b>DEDUCTION OF CONTINGENCIES</b>		
	Owner Contingency	\$ (280,000.00)
	Construction Manager Contingency	\$ (250,000.00)
	<b><u>SUBTOTAL – Deduction Of Contingencies</u></b>	<b>\$ (530,000.00)</b>
<b>DEDUCTION OF UNCOMMITTED ALLOWANCES</b>		
	Anticipated Non-Committed Scope	\$ (83,030.82)
	Hike and Bike Trail	\$ (171,950.00)
	Funbrellas	\$ (15,500.00)
	Select Fill at Outdoor Aquatics	\$ (133,160.20)
	Bicycle Racks	\$ (5,000.00)
	Landscape and Irrigation	\$ (105,235.46)
	<b><u>SUBTOTAL – Deduction Of Uncommitted Allowances</u></b>	<b>\$ (513,876.48)</b>
<b>ADDITIONAL SCOPE ITEMS AND CONSTRUCTION MANAGER FEE</b>		
	PC #42, Kitchen	\$ 127,743.61
	PC #44, Add Lighting to Outdoor Aquatics Area	\$ 200,006.00
	PC #45, Lifeguard Office	\$ 176,689.39
	PC #51, Transfer Kiosk Allowance to Contingency	\$ (36,300.00)
	PC #55, Add Track Lighting in Kitchen Food Prep Area	\$ 3,023.00
	Subtotal of Additional Scope Items	\$ 471,162.00
	Additional Construction Manager's Fee - Additional Scope (12.5%)	\$ 58,895.25
	<b><u>SUBTOTAL – Additional Scope, Construction Manager Fee</u></b>	<b>\$ 58,895.25</b>

**EXHIBIT "G"**  
**FINAL GMP RECONCILIATION ISSUED BY LEE LEWIS CONSTRUCTION, INC.,**  
**DATED DECEMBER 19, 2008**

FRISCO RECREATION AND AQUATIC CENTER – FINAL CONTRACT RECONCILIATION		
LEE LEWIS CONSTRUCTION, INC.		
CHANGES TO DATE		
PC#	DESCRIPTION	AMOUNT
<b>GUARANTEED MAXIMUM PRICE RECONCILIATION</b>		
	Original Guaranteed Maximum Price	\$ 20,472,368.00
	Subtotal – Reconciliation of Change Order Items	\$ 1,943,983.35
	Subtotal – Deduction of Contingencies	\$ (530,000.00)
	Subtotal – Deduction of Uncommitted Allowances	\$ (513,876.48)
	Subtotal – Additional Scope, Construction Manager Fee	\$ 58,895.25
Revised Guaranteed Maximum Price, Frisco Recreation & Aquatic Center		<b>\$ <u>21,431,370.12</u></b>